

Message Text

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PAGE 01 GENEVA 05759 192021Z

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TAGS:ECOSOC UN EGEN EFIN JA
SUBJECT: 61ST ECOSOC: US PROPOSAL ON ILLICIT PAYMENTS

REF: STATE 177215

1. USDEL HAD LENGTHY DISCUSSION WITH JAPANESE DELEGATION ON JULY 19 ABOUT OUR PROPOSED RESOLUTION ON ILLICIT PAYMENTS. JAPANESE INFORMED US INTER ALIA THAT THEY WOULD BE MEETING IN TOKYO ON JULY 20 WITH EMBASSY OFFICIALS TO DISCUSS THE SAME. FOR YOUR BACKGROUND, WE ARE PROVIDING HEREWITH A SUMMARY OF THE MAJOR CONCERNS WHICH THEY RAISED AND OUR RESPONSES HERE IN GENEVA WHICH APPEARED TO HIT A RECEPTIVE CHORD.

2. SPECIFIC ITEMS DISCUSSED INCLUDE:

A) GOJ CONCERN THAT A LEGALLY BINDING TREATY IN THIS AREA MAY PREJUDICE OUR OPPOSITION TO LEGALLY BINDING AGREEMENTS IN TNC CODE OF CONDUCT, ETC. WE EXPLAINED THAT UNLIKE CODE ISSUES WHICH WERE BREAKING NEW GROUND AS REGARDS INTERNATIONAL ECONOMIC REGULATION, MOST COUNTRIES HAD CRIMINAL LEGISLATION CONDEMNING ILLICIT PAYMENTS TO GOVERNMENT OFFICIALS. IT IS THEREFORE A QUESTION OF INTERNATIONAL
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PAGE 02 GENEVA 05759 192021Z

COOPERATION ON AN ISSUE WHERE THERE EXISTS BASIC

AGREEMENT ON THE PRINCIPLES INVOLVED AND, AS IT DEALS WITH CRIMINAL MATTERS, IT IS LOGICAL AND NECESSARY TO TREAT ISSUE VIA AN INTERNATIONALLY BINDING AGREEMENT, JUST AS US AND JAPAN HAVE DONE IN MUTUAL ASSISTANCE AGREEMENT AS REGARDS LOCKHEED. WE EMPHASIZED AT THE SAME TIME THAT THE US POSITION OPPOSING LEGALLY BINDING AGREEMENT IN THE OTHER AREAS MENTIONED ABOVE REMAINED FIRM.

B) GOJ ALSO APPEARED CONCERNED THAT TREATY PROPOSAL WOULD LEAD TO THE ESTABLISHMENT OF BROAD RANGE OF MANDATORY CRIMINAL LEGISLATION WHICH WOULD CAUSE LEGAL AND POLITICAL PROBLEMS IN JAPAN. USDEL EXPLAINED THAT OUR PREFERENCE FOR CONTENTS OF TREATY HAD BEEN SET OUT IN LIMA, PERU AT SECOND SESSION OF TNC COMMISSION AND THAT THESE PREFERENCES ARE NOT AS FAR RANGING AS GOJ FEARS. WE (AS WE BELIEVE GOJ) ASSIGN PRIMARY RESPONSIBILITY FOR THE REGULATION AND PROSECUTION OF ILLICIT PAYMENTS TO NATIONAL GOVERNMENTS. USG'S PREFERENCE IS FOR TREATY TO ESTABLISH (I) PROCEDURES FOR INTERGOVERNMENTAL COOPERATION AND INFORMATION EXCHANGE IN LAW ENFORCEMENT ACTIVITIES RELATED TO ILLICIT PAYMENTS (AS IN US-GOJ AGREEMENT RELATED TO LOCKHEED MATTER); (II) APPROPRIATE REPORTING AND DISCLOSURE REQUIREMENTS FOR ENTERPRISES AS REGARDS PAYMENTS TO AGENTS AND FOREIGN GOVERNMENT OFFICIALS; AND (III) PENALTIES FOR VIOLATIONS OF DISCLOSURE REQUIREMENTS. WHILE USG HAS THESE PREFERENCES, IT MUST BE STRESSED THAT WE RECOGNIZE THAT FINAL TEXT OF TREATY, AFTER A YEAR OF NEGOTIATION, MAY CONTAIN EITHER MORE OR LESS THAN THE ABOVE. THE USG DOES NOT INSIST THAT A TREATY CAN BE ESTABLISHED ONLY ON THE ABOVE PROPOSALS. BASIC POINT OF US RESOLUTION IS THAT WE BELIEVE THAT THE ONLY EFFECTIVE AND MEANINGFUL MECHANISM FOR INTERNATIONAL COOPERATION TO ELIMINATE ILLICIT PAYMENTS IS VIA AN INTERNATIONAL TREATY AND DRAFTING OF TREATY IS THEREFORE CORE OF US PROPOSAL. SUPPORT OF GOVERNMENTS FOR RESOLUTION IS ONLY A RECOGNITION OF THIS FACT. TO SUBSTITUTE A "STUDY" FOR EFFECTIVE ACTION IS TO LOSE A RARE AND IMPORTANT OPPORTUNITY FOR ALL COUNTRIES TO COOPERATE IN HELPING TO RESOLVE AN INVESTMENT PROBLEM CREATING ECONOMIC AND FOREIGN RELATIONS PROBLEMS. EXACT CONTENTS OF TREATY WILL BE DETERMINED ONLY AFTER LENGTHY NEGOTIATING PROCESS INVOLVING LIMITED OFFICIAL USE

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PAGE 03 GENEVA 05759 192021Z

WORKING GROUP, ECOSOC AND UNGA. EACH COUNTRY WILL CERTAINLY BE ABLE TO PROTECT ITS ESSENTIAL INTERESTS DURING THESE NEGOTIATIONS AND, OF COURSE, NO COUNTRY WOULD BE OBLIGED TO SIGN THE EVENTUAL TREATY. THE CRITICAL NOTION AT THIS POINT IS THAT OUR PROPOSAL IS ESSENTIALLY PROCEDURAL AND ESTABLISHES A MEANINGFUL MECHANISM WHEREBY SUCH A TREATY MIGHT BE NEGOTIATED.

C) THE PROPOSAL OF A TREATY WOULD, WE BELIEVE NOT ONLY HELP ELIMINATE ILLICIT PAYMENTS BUT COULD HAVE SIGNIFICANT IMPACT ON RELATIONS WITH G-77 FOR SUCH MEMBERS OF G-77 WHO REFUSE TO NEGOTIATE OR RATIFY TREATY CANNOT THEREAFTER ACCUSE TNC'S AND DEVELOPED COUNTRIES OF PROMOTING CORRUPTION AND REFUSING TO TAKE ADEQUATE STEPS TO MEET THE NEEDS OF DEVELOPING COUNTRIES.

D) GOJ EXPRESSED CONCERN ABOUT THE MANDATE WHICH WOULD BE ASSIGNED TO THE WORKING GROUP ON THE GROUNDS THAT IT IS TOO "NARROW." WE EXPLAINED THAT NARROW MANDATE I.E. LIMITED TO ILLICIT PAYMENTS MADE IN CONNECTION WITH GOVERNMENT TRANSACTIONS, WAS FOR THE PROTECTION OF DEVELOPED COUNTRIES AS A BROADER MANDATE COULD BE USED BY G-77 AS A HUNTING LICENSE TO DRAFT A DOCUMENT CON-DEMNING TNC'S IN GENERAL.

3. JAPANESE DEL WILL BE CABLING TOKYO TONIGHT AS TO OUR CONVERSATION AND IT MAY BE USEFUL FOR EMBOFF TO DRAW ON ABOVE TO CLARIFY ANY MISUNDERSTANDINGS OR QUESTIONS RAISED BY GOJ, IN ADDITION TO EMBOFF MAKING POINTS RAISED IN REFTEL. IT IS ABSOLUTELY ESSENTIAL THAT THE GOJ UNDERSTAND THE IMPORTANCE WE ATTACHE TO THIS RESOLUTION AND IN PARTICULAR THAT CONCRETE STEPS --NOT STUDIES--BE TAKEN TO RESOLVE THE PROBLEM.DALE

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